



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: ALLEN T. WILSON
Senior Assistant Attorney General

DATE: March 25, 2011

SUBJECT: Proposed Regulation 22 VAC 40-745-10 et seq.
Assessment in Assisted Living Facilities

I have reviewed the above-referenced proposed regulation to determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. Additionally, Virginia Code § 63.2-800 requires the State Board to promulgate regulations specific to the Auxiliary Grant program, which includes assessments on persons residing in assisted living facilities. It appears that the State Board has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 14 (2010), and has not exceeded that authority.

If you have any questions, please feel free to call me at 786-0095.